

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MICHAEL L. MACGOWAN, JR.,

§

V.

§

NO. A-10-CA-232-LY

**COLORADO GOVERNOR BILL
RITTER, et. al.**

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§**

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE

Before the Court is Plaintiff's Motion for Default Judgment against Defendant Beverly Debus (Clerk's Doc. No. 15).

On May 14, 2010, the District Judge referred the foregoing to the undersigned Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), Federal Rule of Civil Procedure 72, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges.

I. DISCUSSION

On April 2, 2010, Plaintiff Michael Macgowan filed suit against his ex-wife, Beverly Debus, the Governor of Colorado, Bill Ritter, and the principal of Marble Falls Middle School, John Schumacher, for events relating to a domestic dispute between he and his ex-wife. Though his claims are not entirely clear, Plaintiff states that this court has federal question jurisdiction because he is bringing suit pursuant to 42 U.S.C. § 1983. Defendant Debus failed to answer, so Plaintiff seeks a default judgment against her.

The other two defendants in this case have both moved to have the claims against them dismissed under Rule 12(b). *See* Clerk's Doc. Nos. 5 and 10. By separate order, the undersigned recommends that these motions be granted. As for Defendant Debus, there is no basis for jurisdiction against her. First, it is not alleged that Debus was acting under color of state law, so there is no basis to sue her under § 1983. Second, the Court does not have jurisdiction to grant the relief Plaintiff seeks from Debus related to the domestic dispute between her and Plaintiff. *See Ex parte Burrus*, 136 U.S. 586, 593–94 (1890) (“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.”).

Because the Court does not have jurisdiction over the claims against Debus, and because a court may raise the lack of subject-matter jurisdiction on its own motion, *see Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982), the undersigned recommends that Plaintiff's motion for default judgment be denied and that the suit be dismissed in its entirety.

II. RECOMMENDATION

Based on the foregoing, the undersigned Magistrate Judge **RECOMMENDS** that the District Judge **DENY** Plaintiff's Motion for Default Judgment against Defendant Beverly Debus (Clerk's Doc. No. 15). The undersigned further recommends that the District Judge **DISMISS** the case in its entirety.

III. WARNINGS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are

being made. The District Judge need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from *de novo* review by the District Judge of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Judge. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150–53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996). To the extent that a party has not been served by the Clerk with this Report & Recommendation electronically pursuant to the CM/ECF procedures of this District, the Clerk is directed to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED this 24th day of May, 2010.



ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE